FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 345/2006
(Smt.Suman wd/o Shyamrao Gabhane & another **VERSUS** Smt.Watchalabai wd/o Daulatrao Gabhane & 3 others**)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Talmale, counsel for the appellant.
Shri Muley, counsel for the respondent nos.1 and 2.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 18th September, 2007.

Heard the learned counsel for the parties.

The appellants are the original defendants. A suit was filed by the plaintiffs for partition and separate possession of their 2/5th share in the suit property. The plaintiffs are the real sisters of defendants. According to the plaintiffs, the suit properties were owned by their father Tikaram and the plaintiffs were entitled to 2/5th share in the suit property. Since the defendants denied the share of the plaintiffs, the plaintiffs filed the instant suit.

The defendants denied the plaintiffs' case and pleaded that there was a partition of the properties owned by Tikaram and the plaintiffs and the defendant no.1 had relinquished their share in the

suit property. The property belonging to Tikaram was, therefore, partitioned amongst defendant nos.2 and 3 only.

On the aforesaid pleadings of the parties, the trial Court framed the necessary issues and after considering the evidence tendered by the parties on record, held that the plaintiffs were entitled to partition and separate possession of their 2/5th share in the suit property. The Court further held that the defendant no.2 failed to prove that there was a partition of the suit field bearing Gat Nos.187 and 172 and a house property at Tumsar. The Court then held that the defendant no.2 had further failed to prove that during the partition effected in the year 1972, the plaintiffs and the defendant no.1 had voluntarily relinquished their share in the suit property in favour of the defendant nos.2 and 3.

The judgment passed by the trial Court on 31.07.2003 was challenged in an appeal by the legal heirs of defendant no.2. The first appellate Court by the judgment dated 06.12.2005 confirmed the

findings recorded by the trial Court.

Both the Courts have properly appreciated the evidence to record the concurrent findings of fact in favour of the plaintiff and against the defendant no. 2. The findings of fact recorded by both the Courts do not give rise to any substantial question of law. The questions of law stated in the memorandum of the second appeal are not substantial questions of law. For the aforesaid reasons, the second appeal is dismissed with no order as to costs.

JUDGE

APTE